

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTHONY HAYDENN,

Plaintiff,

**REPORT AND RECOMMENDATION  
11 CV 1003 (NGG) (LB)**

-against-

CITY OF NEW YORK, POLICE OFFICER  
TONG, SERGEANT WHEELER, SERGEANT  
FREIDMAN, POLICE OFFICER DOWNES,  
SERGEANT KURTZ, and POLICE OFFICERS  
JOHN DOES #1-2,

Defendants.

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**BLOOM, United States Magistrate Judge:**

Plaintiff commenced this civil rights action on March 2, 2011. The Court's records do not reflect that plaintiff served defendants Tong and Downes with the summons and complaint.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

By Order dated August 10, 2011, the Court directed plaintiff to file proof that defendants Tong and Downes were served with process by August 19, 2011. The Court explicitly warned plaintiff that "[i]f proof of service is not filed by August 19, 2011, plaintiff's claims against defendants Tong and Downes shall be dismissed without prejudice under Rule 4(m) of the Federal Rules of Civil Procedure." Plaintiff has failed to file proof of service on defendants Tong and Downes as directed, or show good cause why service was not made on these

defendants. Accordingly, it is respectfully recommended that plaintiff's claims against defendants Tong and Downes should be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

#### **FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the fourteen-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physicians' Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Servs., 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

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LOIS BLOOM  
United States Magistrate Judge

Dated: September 8, 2011  
Brooklyn, New York